



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
ACTING COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection  
FROM: Chris Cabot, Bureau of Land & Water Quality, Augusta  
RE: Administrative Consent Agreement for Sugarloaf Mountain Corporation and CNL Income Sugarloaf, LLC  
DATE: July 21, 2011

\*\*\*\*\*  
**Statute and Rule Reference:** The *Site Location of Development Act* (Site Law), 38 M.R.S.A. § 484-A, states, in pertinent part, that any variation from the approved plans, proposals and supporting documents is subject to review and approval of the Department prior to implementation.

The *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits disturbing soil, removing vegetation, and altering a permanent structure in a protected natural resource, namely a Fragile Mountain Area, without first obtaining a permit from the Department.

**Location:** Carrabassett Valley, Maine

**Description:** On January 29, 2010, Department staff received a complaint of tree cutting and building expansion on Sugarloaf Mountain. Through information provided by CNL Income Sugarloaf, LLC and their agents, the following was revealed:

- A. In 2007, a 5,735 square foot addition was constructed onto Bullwinkle's Restaurant which included a 3,140 square foot kitchen and seating addition;
- B. In 2008, a 1,320 square foot enclosed addition along with a 1,045 square foot open deck was constructed at the Restaurant. The 2007 and 2008 additions brought the Restaurant to its current size of 9,281 square feet; and
- C. Approximately 40,000 square feet of forested area around the Restaurant and in the Fragile Mountain Area had been cleared incrementally since 2007 to allow for the construction of the new expansions and to improve skier safety.

**Environmental Issues:** The removal of vegetation in the fragile mountain zone may reduce the scenic and aesthetic characteristics of the mountain, may impair or eliminate habitat for specific species in the high alpine zone, and may increase the potential for erosion. Increasing a building's size and the amount of impervious area may also result in increased nutrient runoff into wetlands and streams and erosion.

In this case, none of these potential impacts were identified.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that SMC and CNL Income Sugarloaf, LLC pay a monetary penalty of \$7,300.00, which has been paid. No further action is necessary as the parties have obtained an after-the-fact Site Location of Development Act Minor Amendment and an after-the-fact Natural Resources Protection Act permit. These were assigned #L-217-26-HA-B and #L-217-2C-HB-N and were approved on July 20, 2010. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

JAMES P. BROOKS  
ACTING COMMISSIONER

IN THE MATTER OF:

SUGARLOAF MOUNTAIN CORPORATION	)	
CNL INCOME SUGARLOAF, LLC	)	ADMINISTRATIVE CONSENT
CARRABASSETT VALLEY, FRANKLIN	)	AGREEMENT
COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
NRPA, SITE	)	
2010-147-L	)	

This Agreement by and among Sugarloaf Mountain Corporation, CNL Income Sugarloaf, LLC, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. CNL Income Sugarloaf, LLC, P.O. Box 4920, Orlando, Florida, 32802, owns a parcel of land in Carrabassett Valley, Maine, as described and recorded in Book 2937 on Page 37 of the Franklin County Registry of Deeds.
2. CNL Income Sugarloaf, LLC is a Delaware limited liability company with a mailing address of 5092 Access Road, Carrabassett Valley, Maine, 04947, and is authorized to conduct business in Maine. Holly Greer is the <sup>SENIOR</sup> Vice President of CNL Income Sugarloaf, LLC.
3. Sugarloaf Mountain Corporation operates a ski area on the property described in Paragraph 1 of this Agreement under the terms of a lease from CNL Income Sugarloaf, LLC dated August 10, 2009.
4. Sugarloaf Mountain Corporation is a Maine corporation with a mailing address of 5092 Access Road, Carrabassett Valley, Maine, 04947. John Diller is the President of Sugarloaf Mountain Corporation.
5. The property described in Paragraph 1 of this Agreement contains a portion of Sugarloaf Mountain above 2,700 feet in elevation from mean sea level which is a Fragile Mountain Area as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(3). A Fragile Mountain Area is a protected natural resource pursuant to 38 M.R.S.A. § 480-B(8).

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IN THE MATTER OF:

SUGARLOAF MOUNTAIN CORPORATION	)	
CNL INCOME SUGARLOAF, LLC	)	ADMINISTRATIVE CONSENT
CARRABASSETT VALLEY, FRANKLIN COUNTY,	)	AGREEMENT
MAINE	)	(38 M.R.S.A. § 347-A)
NRPA, SITE	)	
2010-147-L	)	

6. Pursuant to 38 M.R.S.A. § 480-R(1): “A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred.”
7. In Site Location of Development Order #L-217-26-BT-M, issued to Sugarloaf Mountain Corporation on July 17, 1987, the Department found that any future work on the mountain would require a revision or amendment to Order #L-217-26-BT-M.

Standard Condition 1 of Order #L-217-26-BT-M states in pertinent part: “This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation.”

8. Pursuant to 38 M.R.S.A. § 483-A(2): “A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.”
9. On January 29, 2010, Department staff received a complaint of tree cutting and building expansion on the property described in Paragraph 1 of this Agreement. Through information provided by CNL Income Sugarloaf, LLC and their agents, the following was revealed:
  - A. In 2007, a 5,735 square foot addition was constructed onto Bullwinkle’s Restaurant (Restaurant) which included a 3,140 square foot kitchen and seating addition;
  - B. In 2008, a 1,320 square foot enclosed addition along with a 1,045 square foot open deck was constructed at the Restaurant. The 2007 and 2008 additions brought the Restaurant to its current size of 9,281 square feet; and
  - C. Approximately 40,000 square feet of forested area around the Restaurant and in the Fragile Mountain Area had been cleared incrementally since 2007 to allow for the construction of the new expansions and to improve skier safety.

Sugarloaf Mountain Corporation and CNL Income Sugarloaf, LLC did not first obtain the proper permits from the Department for these activities.

10. By conducting the activities described in Paragraph 9 without first obtaining a permit from the Department, Sugarloaf Mountain Corporation and CNL Income Sugarloaf, LLC violated the *Site Location of Development Law*, 38 M.R.S.A. § 483-A and Standard Condition 1 of Department Order #L-217-26-BT-M.

IN THE MATTER OF:

SUGARLOAF MOUNTAIN CORPORATION	)	
CNL INCOME SUGARLOAF, LLC	)	ADMINISTRATIVE CONSENT
CARRABASSETT VALLEY, FRANKLIN COUNTY,	)	AGREEMENT
MAINE	)	(38 M.R.S.A. § 347-A)
NRPA, SITE	)	
2010-147-L	)	

11. By disturbing soil, removing vegetation, and altering a permanent structure in a protected natural resource, namely a Fragile Mountain Area, without first obtaining a permit from the Department, Sugarloaf Mountain Corporation and CNL Income Sugarloaf, LLC violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
12. On October 14, 2010, the Department issued a Notice of Violation to CNL Income Sugarloaf, LLC regarding the violations described in Paragraphs 9, 10 and 11 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
13. On July 7, 2010, CNL Income Sugarloaf, LLC submitted an after-the-fact Site Location of Development Act Minor Amendment Application and an after-the-fact Natural Resources Protection Act Application for the expansion of Bullwinkle's Restaurant and vegetation removal described in Paragraph 9 of this Agreement. The after-the-fact applications were assigned #L-217-26-HA-B and #L-217-2C-HB-N and were approved by the Department on July 20, 2010.
14. The parties agree this Agreement constitutes a Notice of Violation pursuant to 38 M.R.S.A. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously noticed.
15. The Department has regulatory authority over the activities described herein.
16. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
17. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
18. To resolve the violations referred to in Paragraphs 9, 10 and 11 of this Agreement, Sugarloaf Mountain Corporation and CNL Income Sugarloaf, LLC have made a payment to the Treasurer, State of Maine, upon signing this Agreement, in the sum of seven thousand three hundred dollars (\$7,300.00) as a civil monetary penalty.
19. The Department and the Office of the Attorney General hereby grant a release of their causes of action against Sugarloaf Mountain Corporation and CNL Income Sugarloaf, LLC for the specific violations listed in Paragraphs 9, 10 and 11 of this Agreement on the express condition that all actions listed in Paragraph 18 of this Agreement have been completed in accordance with the express terms and conditions of this Agreement.

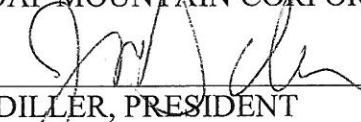
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2010-147-L )

ADMINISTRATIVE CONSENT  
AGREEMENT  
(38 M.R.S.A. § 347-A)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

SUGARLOAF MOUNTAIN CORPORATION

BY:  DATE: 6-6-11  
JOHN DILLER, PRESIDENT

CNL INCOME SUGARLOAF, LLC

BY:  DATE: 6-2-11  
HOLLY GREER, VICE PRESIDENT

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
AMY B. MILLS, ASSISTANT ATTORNEY GENERAL